

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Edward Tsigel	Team: Squad #4	CCRB Case #: 202104394	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 07/19/2021 10:25 AM	Location of Incident: § 87(2)(b)	Precinct: 40	18 Mo. SOL 1/19/2023	EO SOL 1/19/2023	
Date/Time CV Reported Mon, 07/26/2021 2:44 PM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Mon, 07/26/2021 2:44 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Elbi Martinez	22951	962583	040 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Rakib Hasan	16244	966614	040 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Elbi Martinez	Abuse: Police Officer Elbi Martinez entered § 87(2)(b) in the Bronx.	

Case Summary

On July 26, 2021, § 87(2)(b) and § 87(2)(b) filed this complaint in person at the CCRB.

On July 19, 2021, at 10:25 AM, § 87(2)(b) was at home with her two sons, § 87(2)(b) and § 87(2)(b). Police Officer Elbi Martinez and Police Officer Rakib Hasan, both of the 40th precinct, responded to the location to assist a child services (ACS) worker, § 87(2)(b) in checking in on § 87(2)(b)'s sons. PO Martinez knocked on § 87(2)(b)'s door and she opened it. PO Martinez placed his foot inside § 87(2)(b)'s apartment and prevented her from closing the door (**Allegation A – Abuse of Authority** § 87(2)(g)).

No arrests were made, or summons issued as a result of this incident.

The CCRB received two cellphone photographs (BR 06-07) from § 87(2)(b) and two Body Worn Camera (BWC) videos of the incident (BR 04-05).

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Elbi Martinez entered § 87(2)(b) in the Bronx.

On July 19, 2021, at 10:25 AM, § 87(2)(b) (BR 01) was at home with her two sons, § 87(2)(b) (BR 02) and § 87(2)(b). PO Martinez (BR 03) and PO Hasan knocked on her door and she opened it. The officers were with an ACS worker, § 87(2)(b) and security guards from the building. The officers told her that they were there to assist § 87(2)(b) in checking in on her sons. § 87(2)(b) told the officers that she was undressed and closed the door to change. It is undisputed that PO Martinez opened her door, stepped into the apartment, and kept his foot inside the apartment to prevent the door from closing. He stood in the doorway and held the door open with his entire body for approximately five minutes. § 87(2)(b) and her two sons repeatedly told the officers to leave the apartment, but PO Martinez refused. PO Martinez explained to § 87(2)(b), § 87(2)(b), and § 87(2)(b) that § 87(2)(b) needed to see her third son. § 87(2)(b) explained that her third son was not there at the time. PO Martinez removed his foot from the door and § 87(2)(b) closed and locked it.

PO Martinez (BR 03) stated that when he arrived at the location, he spoke to § 87(2)(b) outside of the building. She told him that she wanted assistance with seeing § 87(2)(b)'s children because § 87(2)(b) declined to show her third youngest son and threatened her the last time she was at the apartment. PO Martinez spoke to the security inside the building, and they escorted the officers and § 87(2)(b) to § 87(2)(b)'s apartment. PO Martinez opened the door and stepped inside the apartment to make sure that § 87(2)(b) could check on the children in the apartment. § 87(2)(b) came to § 87(2)(b)'s apartment multiple times prior for the same purpose. He believed that there was an emergency because § 87(2)(b) had not seen § 87(2)(b)'s third son over the last few times that she visited § 87(2)(b). PO Martinez did not have a warrant to enter the apartment and § 87(2)(b) did not provide consent for him to enter the apartment.

The event (BR 04) and 911 call recording (BR 05) show that § 87(2)(b) called 911 and requested officers to assist her in checking the safety of § 87(2)(b)'s children.

PO Martinez's BWC footage (BR 06) is consistent with § 87(2)(b)'s, § 87(2)(b)'s, and PO Martinez's statements. BWC footage does not capture any conversation between the officers and § 87(2)(b). Between 4:30 and 4:50 of his BWC, he opens § 87(2)(b)'s door and enters the apartment. § 87(2)(b) yells at PO Martinez to remove his foot and leave her apartment. PO Hasan's BWC (BR 07) is consistent with PO Martinez's BWC and provides an alternative angle. Additionally, § 87(2)(b) provided two cell phone photographs (BR 08 and 09) which show PO Martinez inside her apartment from another angle.

As per **Family Court Act - FCT § 1024** (BR 10), a police officer or a designated city employee of social services shall take all necessary measures to protect a child's life or health. This includes taking a child into protective custody when they reasonably believe that staying in current circumstances, conditions, or care/custody of the parents or person legally responsible for the care

of the child presents an imminent danger to the child's life or health, if there is not enough time to apply for a court order.

As per People V. Dallas, 8 N.Y. 3d 890 (2007) (BR 11), the courts have established that warrantless entries into private homes are considered unconstitutional. Exceptions to this rule include emergency situations. Emergency situations are defined as an officer having reasonable grounds to believe that there is an immediate need for their assistance for the protection of life or property.

PO Martinez entered § 87(2)(b)'s apartment without a warrant or a court order and without her consent. PO Martinez believed that there was an emergency situation because § 87(2)(b) told him that § 87(2)(b) had declined to show her one of her sons. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR 12).
- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR 13).
- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR 14).
- Police Officer Elbi Martinez has been a member of service for 4 years and has been a subject in 1 other CCRB complaint and 3 allegations, of which one was substantiated.
 - 201908805 involved a substantiated allegation of a discourtesy against PO Martinez. The Board recommended command level instruction and the NYPD imposed command level instruction.
 - § 87(2)(g)

Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.
 - As of September 29, 2021, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards this to complaint (BR 15).
 - § 87(2)(b)
- § 87(2)(b)
- § 87(2)(b)

Squad: 4

Investigator: Edward Tsigel Inv. Edward Tsigel 10/28/2021
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date